Supreme Court, U.S.
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No. 91-696

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1991

JAMES WILSON
Petitioner

v.

SECURITY INSURANCE CO.
Respondent

On Petition for Writ of Certiorari to the Supreme Court of the State of Connecticut

REPLY TO BRIEF IN OPPOSITION

Peter B. Reilly
P.O. Box 1533
New Haven, Ct. 06506

Counsel of Record for
Petitioner

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ARGUMENT

1. RE PART I OF RESPONDENT'S ARGUMENT

The order of the Connecticut Supreme Court creates a new and distinct reason for granting the Petition for Certiorari as well as stating that its prior order was final. The Petitioner disputes Respondent's claim that simple mathematics can resolve issues by the alleged equation of "$40,000.00-$74,033.39 = No Coverage." The Petitioner has been deprived unconstitutionally of showing that evidence would support the available equation: "$40,000.00 less ($40,000.00 divided by $120,000.00 times $74,033.39) = $15,322.30" not only by a decision entered without a factual record, but now by deprivation of further proceedings in arbitration. Petitioner is deprived of due process without exigent reasons by

the denial of opportunity to prove the deduction is subject to apportionment between Respondent and AMICA Insurance and that combined coverage amounted to $120,000.00 and that AMICA took its fair share of that deduction.

The mathematics used by Respondent is available only because the trial court did not permit evidence of the proceedings in arbitration and evidence before the arbitrators was not offered by Respondent. Respondent objected to the trial court's receiving any evidence to be offered by petitioner. This objection was sustained over Petitioner's Constitutional argument that due process required the full record, but the trial court rendered its ruling harmless when it ruled that Respondent had not proven its case. The Supreme Court of Connecticut reversed without regard to the absence of opportunity to present evidence.

Procedure in the State court in Connecticut upon a motion to vacate an arbitration award does not provide for responsive pleadings. The Respondent's petition sought only a vacatur and at first did not assert that stacking of coverage was illegal. The time to file formal challenges to the arbitration award expired 30 days after the award. C.G.S. §52-420. There are no rules for pleading to a motion to vacate provided for by the rules of civil procedure contained in the Connecticut Practice Book. The proceeding is not a civil action. Waterbury v. Waterbury Police Union, 176 Conn. 401, 409, 407 A.2d 1013. After the 30 day period following the award of the arbitrators, Respondent moved to amend its complaint to assert stacking was illegal. Its motion was granted. Time for other challenges by Petitioner had expired.

Petitioner's opportunity to challenge the mathematics in the event a successful challenge to the award rested upon his right to a full evidential hearing without pleadings and an opportunity to offer evidence to prove other coverage ought to be considered before a final result is rendered.

Petitioner had a right to assume that if Respondent proved its case with sufficient evidence, the court would grant the insurance company's application to vacate by vacating the award.

The issues between the parties became fully final when an order was entered for judgment for the insurance company as opposed to a vacatur of the award. Prior absence of clarity was prejudicial to Petitioner's ability to establish a final judgment was ordered at the time of first petition.

Where apportionment clauses duly authorized by insurance regulations do not appear in the policy, the deductions taken by insurance carriers from their payments have been shared on pro-rata basis between the insurance carriers. See Bobeck v Public Service Mutual, 38 Conn. Sup. 318, 320, 45 A.2d 602; Forsberg v New Hampshire Ins. Co., 24 Conn. App. 655, ___ A.2d ___. (Forsberg is probably erroneous on other grounds. See Covenant Ins. v Coon, 220 Conn. 30, ___ A.2d ___. This issue is now foreclosed by the order of July 9, 1991 which bars additional arbitration proceedings, and the finality as to this matter was not apparent prior thereto. Had vacatur been granted as prayed for by Respondent, this issue was presentable.

2. RE PART II OF RESPONDENT'S ARGUMENT

The Respondent claims that the Supreme

Court of Connecticut may find and apply an objective test instead of searching out the actual intentions and expectations based upon the negotiations, and intent of the parties and the applicable valid terms of coverage, state statutes and state regulations, and determine by "objective" standards the reasonable expectations of the parties without any evidence justifying the standard of objectivity arrived at.

An objective test arrived at without sufficient evidence is merely arbitrary and therefor a decision arrived at without due process. It is the absence of an opportunity to present evidence that causes a decision to be reached without due process of law. Proposed "objective" standards may be attacked by evidence as well as established by evidence.

By finding of the standard of objectiv-

ity only after trial of the factual issues, and then acting without regard to the evidence presented, the Petitioner is deprived of opportunity to question whether reasonable expectations may be otherwise; as by proof that premium charges need not be related to total possible exposure by proof of instances involving the sale of liability insurance by Lloyds of London covering rented motor bikes with full primary coverage, infinite in amount, for a standard premium of only One Dollar. Also, the petitioner is deprived of opportunity to prove the issuance of other policies in the market place having uninsured motorist coverage demonstrative of the industry offering coverage indicative of intent to provide stacked "fleet" coverage: as for example a Travelers Insurance Company policy covering a fleet of trucks with coverage

applicable in Connecticut in the amount of $20,000/40,000, and, on the same page, separately listed - uninsured motorist coverage applicable in New Hampshire in the amount of $2,000,000.00 per person to show an insurance company's underwriting expectations were that coverage in Connecticut would equal coverage in New Hampshire. Coupled with total absence of proof of the defendant's actual actuarial expectancies at the time the policy was sold, the objective test is arrived at unfairly. The Respondent is unfairly excused from presenting evidence upon which it quoted its premium.

3. That the petition ought to be granted is supported by the decision in Burlington Truck Lines Inc. v. United States, 71 U.S. 156, 168-169, 9 L Ed 2d 207, 215, 83 S Ct 239 (1962), cited in the Petition, and not commented on by

respondent. The issue with respect to due process is in conflict therewith. The fact-finding portion of the trial has been omitted. Before arbitration commenced, the Connecticut Supreme Court denied the Respondent's claim that the issues could be determined based upon the policy alone, without arbitration. Wilson v. Security Insurance Group, 199 Conn. 618, 631, 509 A.2d 467 [1986].

CONCLUSION

The record before the Supreme Court of Connecticut did not justify reversal of the trial court in the exercise of a due process review, nor the entry of judgment terminating rights to policy benefits.

Respectfully submitted

PETER B. REILLY
129 Church Street
P.O. Box 1533
New Haven, CT. 06506

Counsel for Petitioner